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**OFFICE OF PETITIONS**

In re Application of :  
Wang et al. :  
Application No. 09/595,672 : DECISION ON APPLICATION  
Filed: June 19, 2000 : FOR  
Atty Docket No. 11302-0601 : PATENT TERM ADJUSTMENT  
(KC 15,993) :

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed March 17, 2004. Applicants request a patent term adjustment having an additional one hundred forty-three (143) days based in part on the Office taking in excess of three years to issue the patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met.

Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

As to the application for patent term adjustment, it is **DISMISSED**.

On December 17, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days. Applicants, in effect, dispute a reduction of 88 days for applicant delay in responding to the final Office action mailed May 28, 2003.

Applicants' calculation of this delay has been considered and found to be incorrect. Applicants agree that their response in compliance with § 1.113(c) to the May 28, 2003 final Office action was not received in the Office until November 24, 2003. However, applicants calculate the period of delay pursuant to § 1.704(b) as 83 days. In fact, the period is, as shown in PAIR, 88 days (counting the number of days beginning on the day after the date that is three months after the date of mailing of the Office communication, August 29, 2003, and ending on the date the reply was filed, November 24, 2003).

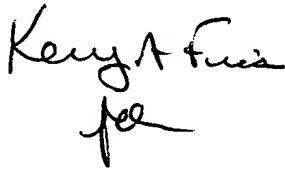
In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is zero (0) days (including 45 days of Office delay and 143 days of applicant delay).

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). This fee is required and will not be waived. No additional fees are required.

The Office of Patent Publication has been advised of this decision. The application is, thereby, being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Karin Ferriter" with a stylized flourish below it.

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy